



16 July 2025

**By E-mail**

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**OPEN LETTER**

Attention: Mr Jan Ellsberger (ETSI Director-General) & Ms Magali Fitzgibbon (Legal Affairs and Governance Director)  
ETSI  
650 Route des Lucioles  
06921 Sophia Antipolis CEDEX  
FRANCE

Dear ETSI Director-General and Legal Affairs and Governance Director,

**Re: ZTE's breach of clause 6.1 of the ETSI IPR Policy, unwillingness to license Samsung, and non-availability of FRAND licence from ZTE**

We, Samsung Electronics Co., Ltd ("Samsung"), write to invoke the procedure in accordance with clause 8.2 of the ETSI Intellectual Property Rights Policy ("ETSI IPR Policy") in view of the non-availability of FRAND licence(s) from ZTE Corporation and members of the ZTE Group (together, "ZTE") in accordance with clause 6.1 of the ETSI IPR Policy after the publication of a standard or a technical specification.

**Background and context**

On 25 June 2025, the High Court of Justice of England & Wales handed down its judgment in the matter of *Samsung Electronics Co., Ltd & Anor v ZTE Corporation & Ors* (Case No. HP-2024-000044). The English Court's judgment is *Samsung v ZTE* [2025] EWHC 1432 (Pat), a public copy of which is enclosed.

By way of background, both Samsung and ZTE have substantial portfolios of SEPs which have been declared essential to cellular standards. In 2021 Samsung and ZTE entered into a global cross-licence to their respective SEPs. The cross-licence has expired, but negotiations for a renewed FRAND cross-licence began in 2023 some six months before expiry and have continued without agreement. Samsung and ZTE agree that any new agreement has to be global in its scope. It is also agreed that Samsung will be the net paying party under any future FRAND cross-licence(s) and this is because Samsung is one of the largest suppliers of cellular devices in the world. The essence of the global dispute between Samsung and ZTE is "how

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much?”, i.e. what is the FRAND net payment(s) in respect of the FRAND cross-licence. In other words, it is about money.

Samsung commenced an action before the English Court on 19 December 2024. The principal claim is for the determination of global FRAND terms for a licence to SEPs, including a cross-licence (see paragraphs 31 and 32 of the judgment). ZTE accepts the jurisdiction of the English Court to determine this claim (see paragraphs 44, 74(i), 82, 83(i), 116, 120, 125 and 155 of the judgment: “in this case, Samsung has invoked the jurisdiction of this Court (and that jurisdiction has been accepted by ZTE)”). The English Court granted a degree of expedition for the English FRAND trial, which is listed to commence in January 2026 (see paragraphs 30 and 47 of the judgment).

Before the English Court, on 11 March 2025, Samsung sought declarations that a willing licensor in the position of ZTE and a willing licensee in the position of Samsung would enter into an interim FRAND (cross-)licence in respect of each other’s SEPs with appropriate royalty terms to be determined by the English Court, subject to adjustment and amendment upon final determination of global FRAND terms by the English Court (or as otherwise agreed by the parties), and further that, if ZTE refuse to offer Samsung such an interim licence, ZTE are unwilling licensors (and unwilling licensees in view of the cross-licence).

## **ZTE’s breach of good faith and breach of FRAND commitments under the ETSI IPR Policy, and their declared status as “unwilling licensors”**

The English Court’s conclusion on Samsung’s application is stated at the last paragraph (162) of the carefully considered and reasoned judgment: “For all these reasons, I propose to grant the interim declaratory relief sought by Samsung.” The English Court makes, *inter alia*, the following findings in its judgment:

- Paragraph 127: “In my judgment, a willing licensor in the position of ZTE would have engaged with this [English] action and proceeded as speedily as possible to the FRAND trial, in the absence of earlier agreement between the parties. In my view, a willing licensor would not commence a wave of injunctive proceedings, whatever the aim of the pressure which those proceedings would exert on the SEP licensee. The wave of injunctive proceedings commenced by ZTE were completely unnecessary since Samsung were and are actively seeking fresh global FRAND cross-licence terms, to replace the previous global cross-licensing terms which the parties abided by for several years. There is no suggestion that Samsung were operating other than as a willing licensee (and as a willing licensor).”
- Paragraph 130: “Overall, and notwithstanding the manoeuvring by ZTE to narrow the gap between the two sides, the conclusion in my judgment is inescapable. ZTE have acted in bad faith with their wave of unnecessary injunctive proceedings, and by using the continuing threat imposed by them to seek to sideline or displace the jurisdiction of this Court and in seeking to secure their preference for a determination in Chongqing.”

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In consequence and in reflection of the English Court's judgment, a Court Order was made on 26 June 2025, a public sealed copy of which is enclosed. The Court Order makes, *inter alia*, the following formal declarations:

1. ZTE are in breach of their obligations of good faith under clause 6.1 of the ETSI IPR Policy.

...

4. In the event that, within seven days of the date of this Order, ZTE refuse either 4.1 or 4.2 below, ZTE are in breach of their FRAND commitments under the ETSI IPR Policy and are unwilling licensors (and unwilling licensees).

4.1 To offer Samsung the Interim Licence<sup>1</sup> and to enter into the same with Samsung; or

4.2 Give the following undertaking to the Court on condition that Samsung gives the reciprocal undertaking set out above:

Pending any application for permission to appeal or the determination of any such appeal, ZTE undertake that they shall abide by the terms of the Interim Licence as if the same were in full force and effect and shall enter into the Interim Licence within seven days of any such appeal or permission to appeal being refused or withdrawn. If any appeal is finally allowed, ZTE shall repay any sums paid by Samsung under their undertaking given above which the Court decides should be repaid (including interest if appropriate).

The 7-day deadline referred to in the Court's Order fell due on 3 July 2025. To date, ZTE have not offered Samsung the Interim Licence (let alone entered into the same with Samsung) and have not undertaken to abide by the terms of the Interim Licence as if the same were in full force and effect.

In consequence of ZTE's refusal to offer the Interim Licence or to abide by its terms, the declaration at paragraph 4 of the Court's Order has formally come into effect from 4 July 2025 and ZTE are presently declared formally by the English Court to be in breach of their FRAND commitments under the ETSI IPR Policy and are declared unwilling licensors. Additionally, the declaration at paragraph 1 of the Court's Order formally came into effect from 26 June 2025, i.e. ZTE are presently declared formally by the English Court to be in breach of their obligations of good faith under clause 6.1 of the ETSI IPR Policy.

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<sup>1</sup> The terms of the Interim Licence itself form part of Confidential Annex 1 to the Order (omitted for reasons of confidentiality).

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## Harm to Samsung

In view of all of the above, Samsung hereby submits a complaint that licences are not available from ZTE in accordance with clause 6.1 of the ETSI IPR Policy. The English Court (whose jurisdiction ZTE accepts) has formally declared ZTE to be in breach of their obligations of good faith under clause 6.1 of the ETSI IPR Policy, in breach of their FRAND commitments under the ETSI IPR Policy, and declared to be unwilling licensors. Accordingly, Samsung seeks prompt commencement of the procedure in accordance with clause 8.2 of the ETSI IPR Policy to remove ZTE's IPRs from any given standards and technical specifications relating to 2G, 3G, 4G and 5G.

Samsung's position is that, in view of the FRAND obligation extending to the process by which parties negotiate for a licence (and not merely an end-point), and the obligation of a SEP holder (such as ZTE) to grant licences to any implementer who desires a licence on FRAND terms, an implementer in Samsung's position:

- is entitled to such a licence as of right – as the only role for an injunction to restrain infringement of a SEP is to enforce the SEP holder's entitlement to the financial remedy obtainable through a licence on such terms, there is no need for such injunctive relief where, as here, Samsung has already given its undertaking to take a licence on FRAND terms;
- requires a licence from the first day that it implements the relevant standard/s, and is entitled to a licence from the first day provided that it is willing to take a licence on FRAND terms (which Samsung is); and
- is entitled to a licence which is continuous and not subject to interruption by injunctions obtained or threatened by the SEP holder.

In view of ZTE's actions and should ZTE be successful in their campaign of seeking injunction relief across the world, Samsung is faced with the very real prospect of injunctions being ordered in Brazil (where a preliminary injunction was granted against Samsung on 23 January 2025, but is presently suspended temporarily), Germany (injunction timing expected as early as November 2025), and possibly across a number of UPC member states, before the English FRAND trial have yet to take place in January 2026 (and certainly before the prospect of any final Court-determined FRAND licence terms being pronounced or put in place), thus excluding Samsung in major markets. There is no doubt whatsoever that enforcement of an injunction in any of the infringement proceedings brought by ZTE would cause very significant irreparable damage to Samsung and Samsung will be faced with the invidious choice of suffering the harm of market exclusion or suffering the harm of entering into a licence on terms insisted by ZTE (that Samsung considers to be *supra*-FRAND).

This is precisely the consequence of ZTE's refusal to offer the Interim Licence, which Samsung believes to be entirely inconsistent with Samsung's entitlement to a licence as of right, from

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day one, and which is continuous and not subject to interruption by injunctions. Otherwise, Samsung is simply unable to sell its relevant products should ZTE manage to obtain and enforce an injunction order through their wave of injunctive proceedings.

In other words, in view of ZTE's continuing refusal to offer the Interim Licence, ZTE are in effect not making available such licences in accordance with clause 6.1 of the ETSI IPR Policy and ZTE should therefore face the consequences of such non-availability of licences in accordance with clause 8.2 of the ETSI IPR Policy, including the removal of ZTE's IPRs from any given standards and technical specifications.

## Next steps

Given the relative urgency of the situation as set out in the Court's judgment (see, e.g., paragraph 30 of the judgment), we look forward to hearing from ETSI at the earliest opportunity as to the next steps and we remain available should you request further details pursuant to clause 8.2.i) of the ETSI IPR Policy. Please send any such requests by email to [hojin.chang@samsung.com](mailto:hojin.chang@samsung.com).

Samsung is content for this letter and its enclosures to be made available to ETSI members and all relevant ETSI stakeholders.

Samsung reserves all of its rights in relation to ZTE's breach of their obligations of good faith under clause 6.1 of the ETSI IPR Policy, their breach of their FRAND commitments under the ETSI IPR Policy, and their declared status as "unwilling licensors".

Yours faithfully,



Hojin Chang  
Corporate EVP/Head of Team  
Licensing Team  
Samsung Electronics

Enclosures